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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,683	02/22/2002	Hideo Anraku	Q67497	8217
23373	7590	01/23/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			ALEXANDER, LYLE	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/009,683

Applicant(s)

ANRAKU ET AL. 

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**1) ☐ Responsive to communication(s) filed on \_\_\_\_.2a) ☐ This action is FINAL.2b) ☒ This action is non-final.3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.**Disposition of Claims**4) ☒ Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.6) ☒ Claim(s) 1-8 is/are rejected.7) ☐ Claim(s) \_\_\_\_ is/are objected to.8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.**Application Papers**9) ☐ The specification is objected to by the Examiner.10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.**Priority under 35 U.S.C. §§ 119 and 120**12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).a) ☐ All b) ☐ Some \* c) ☐ None of:1. ☐ Certified copies of the priority documents have been received.2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.a) ☐ The translation of the foreign language provisional application has been received.14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.**Attachment(s)**1) ☒ Notice of References Cited (PTO-892)2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 121301.4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.5) ☐ Notice of Informal Patent Application (PTO-152)6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jensen et al (USP 4,917,867) or Castaneda (USP 4,876,068).

These references teach a kit containing a two tubular casing of differing sizes where the smaller tube is nested within the larger one. The smaller tube is evacuated and adapted to collect the sample. The larger tube contains reagent in the space between the two tubes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al (USP 4,917,867) or Castaneda (USP 4,876,068).

See Jensen et al (USP 4,917,867) and Castaneda (USP 4,876,068) supra.

These references teach evacuated tubes with one open/plugged end and are silent to the evacuated tube being fitted with plugs at both ends.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well known results. Plugs are well known in the art for having the effect of providing blockage or closure. A plug would have provided the same function of a closed end (e.g. seal the tube at that end).

It would have been desirable to add flexibility to any tube by making both ends sealable by a plug to achieve the known and expected results of sealing/closing the tube. This would be desirable when manufacturing and marketing to provide tubes with

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the capability of performing different functions (e.g. open at both ends, one end or closed at both ends) that are dictated by the user's placement of the plugs.

It would have been within the skill of the art to modify Jensen et al (USP 4,917,867) or Castaneda (USP 4,876,068) and use plugs at both ends as optimization of a result effective variable and to gain the above advantages.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rabi et al. teaches two tubes that are coaxially aligned but is silent to an evacuated innermost tube .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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